

SERVICE DATE – DECEMBER 10, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 402X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
THE CITY OF DETROIT, MICH.

Decided: December 7, 2018

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon rail service in NSR's Detroit Boat Yard. Specifically, NSR seeks to abandon: (1) approximately 0.63 miles of track extending from milepost D 1.38 (at switch) to a point without a milepost approximately 3,303 feet to the north (Segment A); and (2) NSR's common carrier operating interest over approximately 0.49 miles of connecting track jointly owned and operated by NSR and CSX Transportation, Inc. (CSXT), extending from milepost D 1.23 to milepost D 1.72 (near West Jefferson Ave.) in the City of Detroit, Mich. (Segment B) (collectively, Line).¹ Notice of the exemption was served and published in the Federal Register on October 10, 2018 (83 Fed. Reg. 51,041). The exemption became effective on November 9, 2018.

By decision served on November 8, 2018, the Board imposed two salvage-related conditions and an historic preservation condition under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, recommended by the Board's Office of Environmental Analysis (OEA). OEA found that no historic properties within the Area of Potential Effects (APE) would be affected by the abandonment² but recommended the Section 106 condition to allow the Michigan State Historic Preservation Office (the SHPO) sufficient time to review and comment on this finding. The Section 106 condition requires NSR to (a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects, within the rail right-of-way that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process has been completed, (b) report back to OEA regarding any consultations with the SHPO and any other Section 106 consulting parties and the public, and (c) not file its consummation notice or initiate

¹ CSXT's right to operate over Segment B will be unaffected by NSR's abandonment.

² OEA determined that the APE does not encompass the entire rail right-of-way. Because CSXT would continue to operate Segment B as a common carrier rail line, no physical or jurisdictional changes would occur on that segment, and no effects to historic properties would occur. OEA would assess and address any potential effects to historic properties along that segment, if any historic properties are present, if and when CSXT seeks abandonment authority from the Board. Accordingly, the APE is limited to the right-of-way of Segment A.

any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a November 28, 2018 Supplemental Final Environmental Assessment, OEA states that it received a letter from the SHPO on November 21, 2018, concurring with OEA's finding that no historic properties would be affected by the abandonment. OEA states that the Board has therefore satisfied its responsibilities under Section 106 of the NHPA and recommends that the Board remove the Section 106 condition.

In its letter, the SHPO also requested that NSR notify it if the scope of proposed work related to the proposed abandonment changes or if artifacts or bones are discovered. OEA therefore recommends that the Board impose a condition requiring NSR to cease all work and notify OEA and the SHPO if any unanticipated archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage activities. OEA states that it would then consult with the SHPO, appropriate federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Accordingly, based on OEA's recommendation, this proceeding will be reopened, the previously imposed Section 106 historic preservation condition will be removed, and the newly recommended condition concerning unanticipated discoveries will be imposed.

The proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the November 8, 2018 decision is removed.
3. NSR's exemption is subject to the additional condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, NSR shall immediately cease all work and notify OEA, appropriate federally recognized tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, appropriate federally recognized tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.